INSURANCE DEPARTMENT
STATE OF NEW YORK
FIRST AMENDMENT TO REGULATION NO. 147
11 NYCRR 98

VALUATION OF LIFE INSURANCE RESERVES

I, Howard Mills, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law of the State of New York, do hereby promulgate the following First Amendment to Part 98 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 147), to take effect upon publication in the State Register, to read as follows:

(New Matter is Underscored; Matter in Brackets is Deleted)

Section 98.1(a) is amended to read as follows:

(a) to prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates, with primary emphasis on valuation of non-level premium and/or non-level benefit life insurance policies, indeterminate premium life insurance policies, universal life insurance policies, [and] variable life insurance policies, and credit life insurance policies in accordance with statutory reserve formulae, and to clarify principles underlying this Part;

Section 98.2(b) is amended to read as follows:

(b) [This] Except as provided in subdivision (l) of this section with respect to group credit insurance, this Part shall not apply to group life insurance certificates unless such certificates provide for a stated or implied schedule of guaranteed gross premiums required in order to continue coverage in force for a period in excess of one year.

Section 98.2(i) is amended to read as follows:

(i) Where the requirements of this Part for policies issued on or after January 1, 2000 and before January 1, 2004 would produce reserves lower than those previously calculated by an insurer for policies issued prior to [that date] January 1, 2000, such insurer may adopt lower reserves. However, the total reserves for policies for which reserves are calculated using the 1980 CSO Table shall in no case be lower than the minimum required reserves for policies issued on or after January 1, 2000 and before January 1, 2004. Unless notification to the superintendent was previously provided, [the insurer shall notify the superintendent within 45 days after effective date of this Part, whether the reserves for policies issued prior to January 1, 2000, are so determined. That notification shall include basic reserves and deficiency reserves, gross and net of reinsurance, before and after such determination. After 45 days after the effective date of this Part,] such adoption will require prior approval by the superintendent.

A new subdivision (j) is added to section 98.2 to read as follows:

(j) Except for credit life insurance, the minimum mortality standards of section 100.4 of Part 100 of this Title (Regulation 179) may be used for policies issued on or after January 1, 2004, and shall be used for policies issued on or after January 1, 2009, subject to the conditions specified in sections 100.5 and 100.6 of Part 100 of this Title.

A new subdivision (k) is added to section 98.2 to read as follows:

(k) The requirements for certain specified life insurance policies are specified in section 98.9 of this Part.

A new subdivision (l) is added to section 98.2 to read as follows:

(l) The requirements for credit life insurance are specified in section 98.10 of this Part. Sections 98.4 through 98.9 of this Part shall not apply to credit life insurance.

Subdivision (d)(2) of section 98.4 is amended to read as follows:

(2) For variable life insurance, the reserve held for each policy (including basic reserves, deficiency reserves, and any reserves held for supplemental benefits that would expire upon contract termination) prior to any reinsurance reserve credit or other reinsurance adjustment must not be less than the sum of the cash surrender value prior to any deductions for policy loans (including the cash surrender value of the supplemental benefits referred to above) plus the greater of the one year term reserve required by [paragraph] section 98.8(d)(1) of this Part or the attained age level reserve required by section 98.8(d)(2) of this Part at the same duration.

Section 98.4(s) is amended to read as follows:

(s) For a policy which provides for whole life insurance with the amount of death benefit adjusted periodically with a cost of living index, the value of the minimum reserve at any time shall be based on the maximum valuation interest rate for the year of issue and an acceptable mortality table for life insurance statutory reserves and based on the death benefit and premium pattern adjusted as provided in the policy by reasonable annual increases based on the index. The present value of future benefits component shall be further adjusted each year by the ratio of the then current amount of death benefit to the initially projected amount of death benefit. If the policy provides for future premiums and such premiums are also adjusted periodically with a cost of living index, the present value of future premiums component shall likewise be further adjusted each year by the ratio of the then current amount of death benefit to the initially projected amount of death benefit. The assumption as to what is a reasonable annual increase in death benefits based on the index must not be less than the maximum valuation interest rate for the year of issue less [1%] one percent.

Section 98.4(u) is amended to read as follows:

(u) All applications of this Part must be consistent with the principles of section 4217 of the Insurance Law and the principles and concepts of this Part. Section 98.9 of this Part shows examples of how to apply the principles to certain specified policy designs. [The superintendent] An insurer shall [require] hold additional reserves if [it is determined] the superintendent determines that the calculated reserves are less than those calculated by a proper interpretation of this Part.

A new section 98.4(v) is added to read as follows:

(v) For policies that provide long-term care benefits through the acceleration of benefits under group or individual life policies or riders to such policies, the reserves for such benefits shall be determined in accordance with Part 94 of this Title (Regulation 56). The reserves for the life insurance benefits may take into account the reduction in life insurance benefits due to the payment of accelerated benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit is available.

Paragraph (2) of section 98.6(a) is amended to read as follows:

(2) *Segmented reserves* means the excess, if any, of the present value, at the date of valuation, of all future guaranteed life insurance and endowment benefits to the mandatory expiry date of the policy over the present value of all future modified net premiums to such date. The length of each segment is determined at issue by the Contract Segmentation Method as described in section 98.5 of this Part. All present values shall be calculated using the same mortality and interest rates that were used in [applying the Contract Segmentation Method] calculating basic unitary reserves. The modified net premiums within each segment of a policy shall be a uniform percentage of the respective gross premiums within such segment. The segmented reserve shall not be less than the reserve determined using the Commissioners Reserve Valuation Method prescribed in paragraph (3) [below] of this subdivision.

Section 98.7(b)(1)(ii) is amended to read as follows:

(ii) *Secondary guarantee period* for purposes of this [paragraph] section means the period for which the policy is guaranteed to remain in force [subject only to the payment of the specified premiums] based on a secondary guarantee, as defined in paragraphs (1) and (2) of this subdivision. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Reserves for policies for which any secondary guarantee has been unilaterally changed by the insurer after issue shall be the greatest of the following: (a) reserves calculated ignoring the after-issue guarantee, (b) reserves assuming the after-issue guarantee was made at issue, and (c) reserves assuming the policy was issued on the date of the after-issue guarantee.

Section 98.7(b)(1)(iii) is amended to read as follows:

(iii) *Specified premiums* for purposes of this paragraph means the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits (or, in the case of a structural change initiated by the policyholder, the new schedule of benefits after such change) but which otherwise would be insufficient to keep the policy in force in absence of such guarantee if policy maximum mortality and expense charges and minimum guaranteed interest credits were made and any applicable surrender charges were assessed. Specified premiums may be stated directly or implied. For example, specified premiums may be implied via a guarantee that the policy will not lapse if the accumulation of premiums less withdrawals as of any given date is greater than or equal to zero or exceeds a certain dollar amount. Such accumulation may or may not reflect interest and/or deductions for cost of insurance or expense.

Section 98.7(c) is amended to read as follows:

(c) Reserves for any policy that guarantees other than payment of cash surrender value at [age 100] the age at the end of the applicable valuation morality table shall be calculated, before and after [age 100] the age at the end of the applicable valuation mortality table, assuming the policy endows at [age 100] the age at the end of the applicable valuation mortality table for the death benefit at [age 100] the age at the end of the applicable valuation mortality table. For example, the policy guarantees continuation beyond [age 100] the age at the end of the applicable valuation mortality table for the full face amount so long as the cash surrender value is greater than zero at [age 100] the age at the end of the applicable valuation mortality table. For purposes of this Part, the specified premiums in such case are the minimum premiums required to achieve such guarantee.

Section 98.8(b) is amended to read as follows:

(b) In addition to the requirements of this subdivision, the requirements of sections 98.4(a)(1)(i), 98.4(a)(3)-(5), 98.4(b)(5)-(8), 98.4(c)-(e), 98.4(h)-(i), [and] 98.4(l)-(u), and 98.9 shall apply to variable life insurance policies. Variable universal life insurance policies are also subject to section 98.7. In projecting future benefits for determining basic reserves and deficiency reserves for variable universal life products, use the calendar year statutory valuation interest rate for life insurance policies with guarantee durations in excess of twenty years.

A new section 98.9 is added to read as follows:

Section 98.9 Minimum reserves for certain specified life insurance policies

(a) An insurer shall hold additional reserves in an amount determined by the superintendent if the superintendent determines that the calculated reserves are less than those calculated by a proper interpretation of this Part.

(b) Definitions for purposes of this section:

(1) *Secondary guarantee* has the meaning contained in section 98.7(b)(1)(i) of this Part.

(2) *Secondary guarantee period* has the meaning contained in section 98.7(b)(1)(ii) of this Part.

(3) *Fully fund the guarantee* means that the secondary guarantee would be realized with no further premium payment required for the remainder of the secondary guarantee period.

(4) *Shadow account* means the accumulation of premiums less withdrawals calculated in a similar manner as the account value, except with interest credits, mortality charges and/or expense charges that may be different than used to calculate the account value. The resulting value is such that the policy will not lapse if this value as of any given date is greater than or equal to zero or exceeds a certain dollar amount.

(c) Reserve Methodology

(1) Unless otherwise stated, this section applies to policies issued on or after January 1, 2000.

(2) Subparagraphs (i) through (viii) of this subdivision describe various examples of policy features that constitute guarantees. These subparagraphs also provide reserve methodologies that must be used for determining reserves for these products. For policy features not specifically described herein, the methodologies used to value such products must be consistent with those described in this Part.

(i) In certain cases when there is a limit on the insurer's ability to increase premiums:

(a) For example, an initial level premium rate is guaranteed for ten years followed by increased guaranteed premiums for an additional 20 years. However, an insurer may not increase premiums after year ten (i.e., the initial premium continues to be charged) unless some contractually specified event occurs.

(b) In the reserve calculation, an initial reserve segment of 30 years must be used. Since the contract contains provisions that limit the insurer's ability to increase premiums, the initial premium shall be treated as guaranteed for the entire 30-year period. It would be contrary to the conservative nature of statutory accounting to treat this policy the same as one in which the ability to raise premiums is unrestricted.

(ii) In certain cases when there is a refund option:

(a) For example, a term policy has an illustrated level premium for 30 years, the first ten of which are guaranteed. Additionally, there is a refund option that provides that a specified refund will be paid if the premium ever increases. The refund must be requested within a limited time (e.g., 30 days) of receiving notice of the increase. Coverage terminates if the option is exercised.

(b) Regarding the reserve calculation, this example differs from the one in section 98.9(c)(1)(i), in that there is no specified event that has to occur in order for the insurer to impose a premium increase; however, the insurer must provide an additional benefit to the policyholder if it exercises this right. Thus the insurer does not have an unrestricted right to impose an increase after ten years. If the contract contains provisions that require additional benefits be provided to the policyholder in the event of a premium increase, even if these benefits are lost if not claimed within a stated time frame, then the initial premiums shall be treated as guaranteed for the entire 30 year period. It would be contrary to the conservative nature of statutory accounting to treat this policy the same as one in which the ability to raise premiums does not require that additional benefits be provided. Therefore, the initial segment for this policy is 30 years.

(iii) In certain cases when there are policyholder protections against premiums being increased:

(a) For example, an initial level premium rate is guaranteed for ten years followed by increased guaranteed premiums for an additional 20 years. However, after year ten, the policyholder is protected against premiums being increased above the initial level, with the protection provided by a second insurer (i.e., not the direct writer) through either reinsurance, a second policy issued to the policyholder, or an agreement between the insurers.

(b) Regarding the reserve calculation, the combined reserves of the direct writer and the second insurer shall be no less than the amount which the direct writer would hold if there were no second insurer and the initial reserve segment were 30 years. If this condition is not met, reserve credits for the direct writer shall be disallowed. The reserve held by the direct writer shall be based on the initial level premium being guaranteed for 30 years.

(iv) In certain cases when net costs to the policyholder are lower than the gross premium:

(a) For example, a product specifies gross premiums with a guaranteed dividend or guaranteed refund schedule, or by some other means guarantees a net cost to the policyholder that is lower than the gross premium.

(b) Regarding the reserve calculation, the net amount of premium (i.e., gross premium less dividends or refunds) shall be used. This represents the amount the insured actually pays for coverage.

(c) For products reinsured on either a coinsurance or modified coinsurance basis, the reinsurer's reserve calculation shall also be based on the net premium (i.e., gross premiums less dividends or refunds guaranteed to be paid to the policyholder).

(v) In certain cases when a re-entry provision is contained in the policy:

(a) For example, a term life insurance product with a re-entry provision has an initial rate guarantee for ten years, with minimal or non-existent re-entry underwriting, allowing the policyholder to re-enter for an additional 20 years at specified rates. Similarly, a universal life policy has provisions such that, if the universal life policy lapses prior to the tenth policy anniversary because the actual accumulation value (or cash value, depending on design) falls below zero but specified premiums have been paid, a substitute policy is guaranteed to be issued providing the same amount of insurance coverage at the same specified premium for the remainder of the ten-year period plus an additional 20 years.

(b) Regarding the reserve calculation, the re-entry periods and premiums shall be treated as a continuation of the initial guarantees for reserve calculation purposes. The initial reserve segment applicable to the original policy shall be 30 years if the specified premium for the substitute policy is not high enough to trigger a new reserve segment. When the substitute policy is issued, reserves shall be determined as if the coverage had been issued at the issue age and issue date of the original

policy. Effectively, the insurer has guaranteed coverage for 30 years at the time the initial policy is issued, and the reserves established shall reflect that guarantee.

(vi) In certain cases when net reinsurance payments remain unchanged after a change in premium is made:

(a) For example, a reinsurance treaty provides for 30 years of level premiums on a current scale but directly guarantees those premiums for only the first ten years. However, if the reinsurer increases the premiums after ten years, the reinsurer agrees to increase the expense allowance such that the net payments (i.e., premium minus expense allowance) by the direct writer remains unchanged.

(b) Reserve treatment and applicability date for this policy feature are contained in section 98.4(q) of this Part.

(vii) In certain cases when a universal life policy has a cumulative catch-up provision:

(a) For example, a universal life insurance policy has a cumulative premium catch-up provision in which coverage is guaranteed to remain in force as long as a specified premium is paid each year. If the insured is paying less than is required to maintain the guarantee, there is an unlimited right to the policyholder to make up past premium deficiencies.

(b) Regarding the reserve calculation, when a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Since secondary guarantees with catch-up provisions are capable of being reinstated up to the end of the secondary guarantee period, they constitute unexpired secondary guarantees that must be incorporated into the calculation of the greatest of the respective minimum reserves at the valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees.

(c) The basic and deficiency reserves for a secondary guarantee with a catch-up provision shall be computed as if the specified premium requirement had been met. The basic reserve shall be reduced by the product of the catch-up amount, if any, which would be required on the valuation date, and the ratio of the initial (i.e., before adjustment) basic reserve to the sum of the initial basic and deficiency reserves. In no event shall the reduced basic reserve be reduced below zero. The deficiency reserve shall be reduced by the product of the catch-up amount, if any, which would be required on the valuation date and the ratio of the initial deficiency reserve to the sum of the initial basic and deficiency reserves. In no event shall the reduced deficiency reserve be reduced below zero.

(d) If a universal life policy with a premium catch-up provision has a shadow account value below the level necessary to maintain the secondary guarantee, then the reserve for the secondary guarantee shall be valued according to the provisions of this subparagraph. The basic and deficiency reserves, before deduction for the catch-up amount, shall be calculated as specified in subdivision (c)(2)(viii) of this section.

(viii) When a universal life policy guarantees coverage to remain in force as long as the accumulation of premiums paid satisfies the secondary guarantee requirement, for policies issued on or after January 1, 2003, the steps outlined in clauses *(a)* – *(ix)* of this subparagraph must be used to calculate the reserves.

(a) Derive the minimum gross premiums, determined at issue, that will satisfy the secondary guarantee requirement.

(b) For purposes of applying section 98.7(b)(1) of this Part, the specified premiums are the minimum gross premiums derived in clause *(a)* of this subparagraph. Consistent with section 98.5 of this Part, items in clauses *(c)* through *(i)* of this subparagraph shall be calculated on a segmented basis, using the segments that section 98.5 of this Part defines for the product. Therefore, in clauses *(c)* through *(i)* of this subparagraph, the term *fully fund the guarantee* shall mean fully funding the guarantee to the end of each possible segment. The term *remainder of the secondary guarantee period* shall mean the remainder of each possible segment. The reserve shall be no less than the greatest reserve determined by applying the methodology of this subparagraph to the end of each possible segment.

(c) Determine the amount of actual premium payments in excess of the minimum gross premiums. For policies utilizing shadow accounts, this will be the amount of the shadow account. For policies with no shadow accounts but which specify cumulative premium requirements, this excess will be the amount of the cumulative premiums paid in excess of the cumulative premium requirements; the cumulative premium payments and requirements shall include any interest credited under the secondary guarantee, with interest credited at the rate specified under the secondary guarantee.

(d) Complete the calculation of the pre-funding ratio as follows:

(1) As of the valuation date for the policy being valued, for policies utilizing shadow accounts, determine the minimum amount of shadow account required to fully fund the guarantee. For policies with no shadow accounts but that specify cumulative premium requirements, determine the amount of the cumulative premiums paid in excess of the cumulative premium requirements that would result in no future premium requirements to fully fund the guarantee. The cumulative premium payments and requirements shall include any interest credited under the secondary guarantee, with interest credited at the rate specified under the secondary guarantee. For any policy for which the secondary guarantee can not be fully funded in advance, solve for the minimum sum of any possible excess funding, either the amount in the shadow account or excess cumulative premium payments depending on the product design, and the present value of future premiums, using the maximum allowable valuation interest rate and the minimum mortality standards allowable for calculating basic reserves, that would fully fund the guarantee. Additionally, for policies issued on or after July 1, 2005, the amount determined in this clause is to then be divided by 0.93.

(2) The result from clause *(c)* of this subparagraph shall be divided by the number determined in subclause *(1)* of this clause, with the resulting ratio capped at one. This ratio is intended to measure the level of prefunding for the secondary guarantee that is used to establish reserves. Assumptions within the numerator and denominator of this ratio therefore must be consistent in order

to appropriately reflect the level of prefunding. A ratio of one shall result for any secondary guarantee which is fully funded on the valuation date.

(e) Compute the net single premium on the valuation date for the coverage provided by the secondary guarantee for the remainder of the secondary guarantee period, using the applicable valuation table and select factors as prescribed in section 98.4(a) of this Part, or Part 100 of this Title (Regulation 179), if applicable.

(f) Determine the net amount of additional premiums by multiplying the ratio from clause *(d)* of this subparagraph, by the difference between the net single premium from clause *(e)* and the basic and deficiency reserve, if any, computed in clause *(b)* of this subparagraph.

(g) Compute the reduced deficiency reserve by multiplying the deficiency reserve, if any, by one minus the ratio from clause *(d)* of this subparagraph, but not less than zero. This reduced deficiency reserve is the deficiency reserve to be used for purposes of section 98.7(b)(1)(vi)*(a)* of this Part.

(h) Complete the next step in the calculation of the reserve as follows:

(1) The actual reserve used for purposes of section 98.7(b)(1)(vi)*(a)* of this Part is the lesser of: *(i)* the net single premium from clause *(e)* of this subparagraph; and *(ii)* the amount of the excess from clause *(f)* plus the basic reserve and the deficiency reserve, if any, computed in clause *(b)* of this subparagraph. Reduce this result by the applicable policy surrender charges, i.e., the account value less the cash surrender value. For policies issued on or after July 1, 2005, multiply the surrender charge by the ratio of the net level premium for the secondary guarantee period divided by the net level premium for whole life insurance.

(2) Calculate both net premiums using the maximum allowable valuation interest rate and the minimum mortality standards allowable for calculating basic reserves. However, if no future premiums are required to support the guarantee period being valued, there is no reduction for surrender charges. If the resulting amount is less than the sum of the basic and deficiency reserve from clause *(b)* of this subparagraph, then the basic and deficiency reserves to be used for the purposes of section 98.7(b)(1)(vi)*(a)* of this Part are those calculated in clause *(b)* of this subparagraph, and no further calculation is required.

(i) Compute an increased basic reserve by subtracting the reduced deficiency reserve in clause *(g)* of this subparagraph from the reserve computed in clause *(h)* of this subparagraph. This increased basic reserve is the basic reserve to be used for purposes of section 98.7(b)(1)(vi)*(a)* of this Part.

A new section 98.10 is added is to read as follows:

Section 98.10 Minimum reserves for credit life insurance

(a) For the purposes of this section, the following terms shall have the following meanings:

(1) *Credit life insurance* means insurance on the life of a debtor in connection with a specific loan or other credit transaction in this State to provide payment to a creditor in the event of the death of the debtor. Credit life insurance does not include:

(i) Insurance written in connection with a credit transaction that is:

(a) Secured by a first mortgage or deed of trust; and

(b) Made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose.

(ii) Insurance sold as an isolated transaction on the part of the insurer and not related to an agreement or a plan for insuring debtors of the creditor.

(iii) Insurance for which no identifiable charge is made to the debtor.

(iv) Insurance on accounts receivable.

(2) *Creditor* has the meaning contained in Part 185.1(d) of this Title (Regulation 27-A).

(3) *Debtor* has the meaning contained in Part 185.1(e) of this Title (Regulation 27-A).

(b) Minimum mortality standards

(1) The following minimum mortality standards may be used for policies issued on or after January 1, 2004, and shall be used for policies issued on or after January 1, 2009:

(i) The minimum standard for both male and female insureds shall be the 2001 CSO Male Composite Ultimate Mortality Table, as defined in Part 100 of this Title (Regulation 179).

(ii) Where the credit life insurance policy or certificate insures two lives, the minimum standard shall be twice the mortality in the 2001 CSO Male Composite Ultimate Mortality Table based on the age of the older insured.

(2) For other policies, the minimum mortality standard is as stated in section 4217(c)(2) of the Insurance Law.

(c) Minimum Standards

(1) The interest rates used in determining the minimum standard for valuation shall be the calendar year statutory valuation interest rates as defined in section 4217(c)(4) of the Insurance Law.

(2) The method used in determining the minimum standard for valuation for any policy shall be the greater of:

(i) The Commissioners Reserve Valuation Method; or

(ii) Cash surrender value or premium refund.

(3) In applying the Commissioners Reserve Valuation Method, consideration should be given to the period of time for which renewability of benefits is guaranteed under the contract. If benefits are guaranteed for less than one year, the method produces a reserve equal to the mortality cost from the valuation date to the premium "paid-to" date.

Section 98.9 is renumbered as 98.11.

I, Howard Mills, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the First Amendment to Part 98 of Title 11 (Regulation No. 147), promulgated by me on, December 20, 2006, pursuant to the authority granted by Sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517, of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure, prior notice of the proposed amendment was published in the State Register on August 9, 2006. No other publication or prior notice is required by statute.

Howard Mills
Superintendent of Insurance

Date: December 20, 2006